

**THE DEPUTY MAYOR FOR PLANNING  
AND ECONOMIC DEVELOPMENT**

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**NOTICE OF FINAL RULEMAKING**

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The Deputy Mayor for Planning and Economic Development (“Deputy Mayor”), pursuant to the authority set forth in § 107 of the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.07) (“Inclusionary Zoning Act”) and Mayor’s Order 2008-59, dated April 2, 2008, hereby gives notice of the adoption of a new Chapter 22 entitled “Inclusionary Zoning Implementation” of Title 14 (Housing) of the District of Columbia Municipal Regulations (“DCMR”).

These rules will amend establish procedures for implementing the Inclusionary Zoning Act and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 of Title 11 (Zoning) of the DCMR.

A revised notice of proposed rulemaking on this matter was published in the *D.C. Register* on December 26, 2008 (55 DCR 12923). In response to comments received after the issuance of the notice, certain changes to the proposed rulemaking were incorporated into a final rulemaking on May 15, 2009 (56 DCR 3907). A Notice of Emergency and Proposed Rulemaking for Inclusionary Zoning Implementation rules was published in the *D.C. Register* on August 28, 2009 (30 DCR 7120). In response to administrative comments received after the issuance of that notice, certain changes were determined necessary to fully implement the Inclusionary Zoning Program. There was an immediate need to preserve the public welfare through adopting these rules quickly to align the necessary changes with the previously adopted final rules so that the Inclusionary Zoning Program was fully implemented. The emergency rulemaking was adopted on August 14, 2009 and became effective immediately on that date. No changes have been made to the text of the emergency and proposed rules, as published.

These final rules shall become effective on the date of publication of this notice in the *D.C. Register*.

Title 14 (Housing) of the DCMR is amended by adding a new Chapter 22 to read as follows:

**CHAPTER 22 INCLUSIONARY ZONING IMPLEMENTATION**

Secs.

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## **2200 GENERAL PROVISIONS**

- 2200.1 The purpose of this Chapter is to implement the Zoning Commission’s Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26) and the Inclusionary Zoning Act.
- 2200.2 Subject to certain exemptions, the Zoning Commission’s Inclusionary Zoning Regulations mandate that, in applicable zone districts, Inclusionary Units be provided in new residential buildings of ten (10) or more dwelling units or when the construction of ten (10) or more dwelling units represents an expansion of an existing building’s gross floor area by fifty percent (50%) or more.
- 2200.3 The Zoning Commission’s Inclusionary Zoning Regulations establish a formula to determine the minimum and maximum amount of gross floor area that must be reserved for Inclusionary Units, but leave the establishment of maximum prices and rents for the Inclusionary Units to the Council and the Mayor.
- 2200.4 Subject to certain exceptions, the Inclusionary Zoning Act requires Inclusionary Units be sold or leased only to persons authorized by the Mayor at a price or rent no greater than the maximum established by the Mayor.
- 2200.5 The Inclusionary Zoning Act also provides that:

- (a) No building permit shall be issued for an Inclusionary Development unless the Mayor approves a Certificate of Inclusionary Zoning Compliance and a covenant signed by the Owner of the Inclusionary Development
  - (b) No certificate of occupancy for a Market Rate Unit in an Inclusionary Development shall be issued unless the application includes a written statement signed by the Mayor and dated no earlier than six (6) months before the date of the application indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance; and
  - (c) A violation of the Inclusionary Zoning Program constitutes grounds for the revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.
- 2200.6 This Chapter implements these aspects of the Inclusionary Zoning Act by establishing, among other things:
  - (a) The process and prerequisites for obtaining building permits and certificates of occupancy for Inclusionary Developments;
  - (b) The process for selecting households for referral to the owner of an Inclusionary Unit; and
  - (c) The responsibilities of and limitations on Inclusionary Unit Owners and Tenants.
- 2200.7 All timeframes established in this Chapter for an agency to take an action are guidelines only. An agency's failure to act within a timeframe established in this Chapter shall not constitute a default by the agency and shall not permit any person to take or refuse to take any action governed by the Inclusionary Zoning Program.
- 2200.8 In computing a period of time specified in this Chapter, calendar days shall be counted unless otherwise provided.
- 2200.9 In computing a period of time specified in this Chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period of time so computed shall be included unless it is a Saturday, Sunday, or official District of Columbia holiday, in which case the period of time shall run until the end of the next day that is neither a Saturday, Sunday, nor official District of Columbia holiday.
- 2200.10 When, under this Chapter, a person has the right or is required to perform an act within a prescribed period of time after the sending of or the date of a notice or other paper, and the paper or notice is sent by mail, three (3) days shall be added to the prescribed period of time.

2200.11 In the event of a conflict between the provisions of this Chapter and the provisions of the Inclusionary Zoning Act or the Zoning Commission's Inclusionary Zoning Regulations, the most stringent provision shall apply.

**2201 PREREQUISITES FOR OBTAINING BUILDING PERMITS FOR AN INCLUSIONARY DEVELOPMENT**

2201.1 No building permit shall be issued for an Inclusionary Development unless:

- (a) The Department of Consumer and Regulatory Affairs receives and approves an application for a Certificate of Inclusionary Zoning Compliance, signed by the Owner of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program; and
- (b) The Inclusionary Development Owner files with the District of Columbia Recorder of Deeds the Inclusionary Development Covenant approved by the Department of Housing And Community Development pursuant to § 2204.

**2202 APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE**

2202.1 The Inclusionary Development Owner shall file a written application for a Certificate of Inclusionary Zoning Compliance with the Department of Consumer and Regulatory Affairs no later than the date upon which the first application for a building permit is filed for the Inclusionary Development.

2202.2 The Inclusionary Development Owner shall include with its application for a Certificate of Inclusionary Zoning Compliance payment of an application fee of two hundred fifty dollars (\$250)

2202.3 The Inclusionary Development Owner shall file its application for a Certificate of Inclusionary Zoning Compliance on a form prescribed by the Department of Consumer and Regulatory Affairs and shall provide such information as is requested on the form.

2202.4 The application form for a Certificate of Inclusionary Zoning Compliance shall include:

- (a) The name of the Inclusionary Development, its marketing name if different, and the apartment house or condominium name, if applicable;
- (b) The street address of the Inclusionary Development;
- (c) The zone district and, if applicable, overlay district in which the Inclusionary

Development is located;

- (d) The current and proposed square, suffix, and lot numbers on which the Inclusionary Development will be located;
- (e) A list of all Inclusionary Units in the Inclusionary Development. Each Inclusionary Unit shall be identified by unit number, net square footage, and the number of bedrooms. The list shall also include, and separately identify, any Inclusionary Units that will serve as the location for the offsite compliance of another Inclusionary Development, as approved by the Board of Zoning Adjustment, together with a copy of the Board of Zoning Adjustment order approving the offsite compliance;
- (f) A certification from the Inclusionary Development's architect or engineer that the size of each Inclusionary Unit is at least ninety-eight percent (98%) of the average size of the same type of Market Rate Unit in the development or at least ninety-eight percent (98%) of the size indicated in the following table, whichever is lesser:

Types of Dwelling	Type of Unit	Minimum Unit Size (square feet)
Multiple Family Dwelling	Studio/ Efficiency	400
	One Bedroom	550
	Two Bedroom	800
	Three Bedroom	1000
	Four Bedroom	1050
One or Two Household Dwellings	Two Bedroom	1000
	Three Bedroom	1200
	Four Bedroom	1400

- (g) A copy of the site plan, front elevation or block face, and all residential floor plans for the Inclusionary Development. The floor plans shall show the location of each Inclusionary Unit and each Market Rate Unit and shall identify each by unit number;
- (h) A copy of the building plat, if required by the Department of Consumer and Regulatory Affairs pursuant to 12A DCMR § 106.1.12;
- (i) A plan for the phasing of construction that demonstrates compliance with 11 DCMR § 2605.5, which requires that all Inclusionary Units in an Inclusionary Development be constructed prior to or concurrently with the construction of Market Rate Units, except that in a phased development, the Inclusionary Units shall be constructed at a pace that is proportional with the construction of the Market Rate Units;
- (j) The total land area of all of the lots included in the Inclusionary Development;

- (k) The total gross square footage of the Inclusionary Units in the Inclusionary Development, the net residential square footage of the Inclusionary Development, and the gross residential square footage of the Inclusionary Development;
- (l) The total net floor area that will be set aside for Inclusionary Units as calculated by multiplying the total gross square footage of the Inclusionary Units required by 11 DCMR § 2603 by the ratio of the net residential square footage to the gross residential square footage of the Inclusionary Development;
- (m) The total gross floor area of Inclusionary Units that will be set aside for Low and Moderate Income Households, if such Inclusionary Units are required by 11 DCMR § 2603.3, calculated pursuant to the method set forth in paragraph (n) of this subsection;
- (n) A proposed schedule of standard finishes, fixtures, equipment, and appliances for both Inclusionary Units and Market Rate Units;
- (o) For each Inclusionary Unit, the approximate date by which the Inclusionary Development Owner will provide a Notice of Availability pursuant to § 2206;
- (p) If construction of the Inclusionary Development will result in the temporary displacement of tenants who are entitled by law to return to comparable units, a list of the Inclusionary Units for which a right of return exists; and
- (q) Such other information as may be requested by the Department of Consumer and Regulatory Affairs.

## **2203 REVIEW AND APPROVAL OF APPLICATION FOR CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE**

- 2203.1 If the Department of Consumer and Regulatory Affairs determines that an application for a Certificate of Inclusionary Zoning Compliance does not demonstrate compliance with the Inclusionary Zoning Program or the information provided is insufficient, the Department of Consumer and Regulatory Affairs shall provide to the Inclusionary Development Owner a written notice of the deficiency and shall allow the Inclusionary Development Owner a reasonable period of time, designated in the written notice, to cure the deficiency.
- 2203.2 If the Inclusionary Development Owner fails to cure the deficiency within the period of time set forth in the written notice, the Department of Consumer and Regulatory Affairs may deny the application.

- 2203.3 If the application for a Certificate of Inclusionary Zoning Compliance demonstrates compliance with the Inclusionary Zoning Program, and the proposed Inclusionary Development Covenant conforms to the requirements of § 2204, the Department of Consumer and Regulatory Affairs shall review and issue the Certificate of Inclusionary Zoning Compliance and the Department of Housing and Community Development shall review and issue the Inclusionary Development Covenant prior to final approval of the building permit application.
- 2203.4 The building permit application may be approved only after both the Certificate of Inclusionary Zoning Compliance and the Inclusionary Development Covenant are filed among land records.

#### **2204 INCLUSIONARY DEVELOPMENT COVENANT**

- 2204.1 The Inclusionary Development Covenant shall be in a form found legally sufficient by the Office of Attorney General and shall bind all persons with a property interest in any or all of the Inclusionary Development, and all assignees, mortgagees, purchasers, and other successors in interest, to such declarations as the Department of Housing and Community Development may require, but, at a minimum, shall include:
- (a) A provision requiring that the present and all future Owners of a Rental Inclusionary Development shall construct or maintain and reserve Inclusionary Units at such affordability levels and in such number, square footage, and comparable level of finish as indicated on the Certificate of Inclusionary Zoning Compliance and shall rent such Inclusionary Units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
  - (b) A provision requiring that the present and all future Owners of a For Sale Inclusionary Development shall construct and maintain Inclusionary Units at such affordability levels and in such number, and square footage as indicated on the Certificate of Inclusionary Zoning Compliance and shall sell each Inclusionary Unit in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance;
  - (c) A provision binding all assignees, mortgagees, purchasers, and other successors in interest to the Inclusionary Development Covenant; and
  - (d) A provision providing for the release or extinguishment of the Inclusionary Development Covenant only upon the reasonable approval of the Department of Housing and Community Development Inclusionary Zoning Administrator.
  - (e) A provision requiring that the sale or resale of an Inclusionary Unit shall be only to a Household selected by the Department of Housing and Community Development or otherwise authorized by this Chapter, at a price that does not exceed the Maximum Resale Price established in accordance with § 2218.

- (f) The lease rider shall be attached as an Exhibit to the lease for a Rental Inclusionary Unit and shall be executed by the Inclusionary Development Owner and each Inclusionary Unit Tenant, including any occupant of a Rental Inclusionary Unit that is eighteen (18) years old or older.
- 2204.2 The Department of Housing and Community Development may require, in its sole discretion, the use of a deed of trust to ensure compliance by an Inclusionary Development Owner with the Inclusionary Development Covenant.
- 2205 CERTIFICATES OF OCCUPANCY FOR INCLUSIONARY UNITS
- 2205.1 An Inclusionary Development Owner shall obtain a certificate of occupancy for each Inclusionary Unit in an Inclusionary Development or a certificate of occupancy for an Inclusionary Development that identifies and includes each Inclusionary Unit in the Inclusionary Development.
- 2205.2 Prior to the issuance of a certificate of occupancy for an Inclusionary Unit or Inclusionary Development, an Inclusionary Development Owner shall provide to the Department of Consumer and Regulatory Affairs an update of all information provided in its application for a Certificate of Inclusionary Zoning Compliance, if there has been any substantive change to such information since the filing of the application. The Department of Consumer and Regulatory Affairs shall review the updated information pursuant to the procedures set forth in § 2203.
- 2205.3 After the submission of the application for a certificate of occupancy, the Department of Consumer and Regulatory Affairs shall inspect the Inclusionary Unit or Inclusionary Development for compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.
- 2205.4 The Department of Consumer and Regulatory Affairs shall make good faith efforts to complete its Inclusionary Zoning compliance inspection within seventeen (17) days after receipt of the certificate of occupancy application.
- 2205.5 No certificate of occupancy for an Inclusionary Unit or Inclusionary Development shall be issued unless the Department of Consumer and Regulatory Affairs determines that the Inclusionary Unit or Inclusionary Development is in compliance with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.
- 2205.6 The Department of Consumer and Regulatory Affairs may authorize third parties to certify the compliance of an Inclusionary Unit or Inclusionary Development with the Certificate of Inclusionary Zoning Compliance and the Inclusionary Zoning Program.
- 2205.7 Pursuant to the Rental Housing Act of 1985, as amended, if an Inclusionary Unit Owner enters into a temporary lease of a For Sale Inclusionary Unit, an Inclusionary



Unit Owner must register the Rental Inclusionary Unit as exempt, pursuant to § 42-3502.05(a)(1) of the D.C. Official Code, with the Rental Accommodations Division of the Department of Housing and Community Development.

**2206 NOTICE OF AVAILABILITY; HOUSING LOCATOR WEBSITE  
REGISTRATION**

- 2206.1 The provisions of this section govern the process by which:
- (a) The owner of a For Sale Inclusionary Development or a For Sale Inclusionary Unit fulfills its obligation to notify the Department of Housing and Community Development that an Inclusionary Unit is available for purchase; and
  - (b) The owner of a Rental Inclusionary Development fulfills its obligation to notify the Department of Housing and Community Development that an Inclusionary Unit is available for lease.
- 2206.2 An Owner shall provide the notification described in § 2206.1 to the Department of Housing and Community Development by filing a written Notice of Availability in accordance with the provisions of this section.
- 2206.3 An Inclusionary Development Owner shall file the initial Notice of Availability for an Inclusionary Unit prior to the date of the certificate of occupancy final inspection from the Department of Consumer and Regulatory Affairs for the Inclusionary Development or the Inclusionary Unit.
- 2206.4 An Owner of a Rental Inclusionary Unit shall file all subsequent Notices of Availability no later than seventeen (17) days after a Tenant gives notice of its intent to vacate the Inclusionary Unit, including a notice of intent provided pursuant to § 2216.1, or the Owner becomes aware that the Tenant has vacated or will vacate the Inclusionary Unit, whichever is earliest.
- 2206.5 An Owner of a For Sale Inclusionary Unit shall file all subsequent Notices of Availability at least forty-five (45) days before the date the Owner markets the Inclusionary Unit to eligible Households or, if the Inclusionary Unit is to be offered pursuant to a lottery performed pursuant to § 2210, at least thirty-five (35) days before the lottery.
- 2206.6 The Notice of Availability shall include:
- (a) The Inclusionary Unit's street address and unit number;
  - (b) The estimated date upon which the Inclusionary Unit will be available for occupancy;

- (c) For each initial Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any optional or required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking. For each such fee or cost, the following information shall be provided:
    - (1) The amount of the fee or cost;
    - (2) A description of the fee or cost and how it will be charged; and
    - (3) If applicable, the budget for the condominium, cooperative, or homeowner association, the condominium, cooperative, or homeowner association fee for each Market Rate Unit and each Inclusionary Unit, and the formula by which such fee is assessed;
  - (d) For each subsequent Notice of Availability for a For Sale or Rental Inclusionary Unit, a list of any required upfront or recurring fees and costs, including but not limited to condominium, cooperative, or homeowner association fees and fees or costs for amenities, services, upgrade options, or parking, and the amount of each such fee or cost;
  - (e) For each subsequent Notice of Availability for a For Sale Inclusionary Unit, an itemized list of all capital improvements and upgrades made to the Inclusionary Unit that the Owner wishes the Department of Housing and Community Development to consider when establishing the Maximum Resale Price pursuant to § 2218. The Inclusionary Unit Owner shall document each cost or value claimed with receipts, contracts, or other supporting evidence;
  - (f) For each subsequent Notice of Availability for a Rental Inclusionary Unit, the method by which a Household shall be selected for the rental or sale of the Inclusionary Unit, which method shall be consistent with § 2208;
  - (g) Such other information as may be required by the Department of Housing and Community Development.
- 2206.7 Within five (5) days after the Owner files a Notice of Availability, the Owner shall register the Inclusionary Unit for which the Notice of Availability was filed with the housing locator website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

**2207 DESIGNATION OF MAXIMUM PURCHASE PRICE OR RENT**

- 2207.1 Within seventeen (17) days after the receipt of a Notice of Availability, the Department of Housing and Community Development shall notify the Owner of the maximum purchase price or rent for each Inclusionary Unit listed in the Notice of Availability.
- 2207.2 Except as provided in § 2207.5, the initial maximum purchase price or rent for an Inclusionary Unit shall be the greater of:
- (a) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the application for the Certificate of Inclusionary Zoning Compliance issued for the Inclusionary Development in which the Inclusionary Unit is located; or
  - (b) The purchase price or rent in the Rent and Price Schedule in place on the filing date of the Notice of Availability for the Inclusionary Unit.
- 2207.3 The maximum purchase price for all subsequent sales of an Inclusionary Unit Owner shall be the Maximum Resale Price determined by the Department of Housing and Community Development pursuant to § 2218.
- 2207.4 The maximum rent for all subsequent rentals shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.
- 2207.5 If the costs provided for a For Sale Inclusionary Unit in response to §2206.6(d) exceed by ten percent (10%) or more the cost assumptions in the applicable Rent and Price Schedule, the Department of Housing and Community Development may lower the initial maximum purchase price to the extent needed to maintain the affordability standard set forth in § 103(a) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(a)) and this Chapter.

**2208 METHOD OF SELECTION OF HOUSEHOLDS**

- 2208.1 Except as provided in § 2208.3, a Household shall be selected for the initial or subsequent sale and for the initial lease of an Inclusionary Unit through a lottery conducted pursuant to § 2210.
- 2208.2 No lottery is required for the initial or subsequent sale or the initial lease of an Inclusionary Unit if the Inclusionary Development is to be:
- (a) Leased or sold to a household displaced from and entitled by law to return to the Inclusionary Unit;

- (b) Leased or sold as a replacement unit as part of the New Communities Initiative; or
- (c) Sold by an Inclusionary Unit Owner to the Inclusionary Unit Owner's spouse, domestic partner, parent, trust for the benefit of a child, child who is subject to a guardianship, or child who is eighteen (18) years of age or older, if the spouse, domestic partner, parent, or child submits the information and documents required by § 2213.1.

2208.3 A Household may be selected for the subsequent lease of a Rental Inclusionary Unit through:

- (a) A lottery conducted pursuant to § 2210;
- (b) A method described in § 2208.2(b) or (c) (and set forth in the Notice of Availability pursuant to § 2206.6(g)); or
- (c) A method established by the Owner (and set forth in the Notice of Availability pursuant to § 2206.6(g)), if the method meets the following standards:
  - (1) The Owner maintains a selection list or waiting list ("Owner List") for the Inclusionary Unit or the Inclusionary Development in which the Inclusionary Unit is located that is open to the general public and includes the information listed in § 2209.3;
  - (2) The Owner markets the Inclusionary Unit to the first four (4) Households on the Owner List that qualify for the Inclusionary Unit based on Household size and Household income, as ranked in the following order:
    - (A) Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List;
    - (B) Households with a least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the Owner List; and
    - (C) Other Households, who shall then be ranked by the length of time each has been on the Owner List.
  - (3) The Owner allows each Household at least seventeen (17) days to indicate its interest in leasing the Inclusionary Unit.
  - (4) The Owner does not lease the Inclusionary Unit before thirty (30) days after the Owner begins to market the Inclusionary Unit to the four (4)

Households, unless the Inclusionary Unit is leased to the highest-ranked Household that has indicated its interest in leasing the Inclusionary Unit.

- (5) After the thirty (30) day period designated in subparagraph (4) of this subsection, the Owner may lease the Inclusionary Unit to any of the four (4) Households; provided, if there are two (2) or more such Households that are ready and eligible to lease the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease the Inclusionary Unit to the highest-ranked such Household.
- (6) If none of the first four (4) Households leases the unit after a reasonable period of time, the Owner may market the Inclusionary Unit to the next four (4) Households ranked in the same order as set forth in paragraph (b) of this subsection and lease the Inclusionary Unit pursuant to the standards established by subparagraphs (1) through (5) of this subsection.

## **2209 DISTRICT LOTTERY — REGISTRATION FOR LOTTERY**

- 2209.1 In order to be eligible to participate in the District-conducted lottery for the purchase or rent of an Inclusionary Unit, a Household shall register with the Department of Housing and Community Development.
- 2209.2 The Department of Housing and Community Development shall maintain at least the two (2) following lottery registration lists:
  - (a) The District List, consisting of Households whose members live in, or at least one (1) of whose members works in, the District of Columbia; and
  - (b) The Miscellaneous List, consisting of Households that do not qualify to be placed on the District List.
- 2209.3 A Household seeking to be placed on a registration list shall provide the following information to the Department of Housing and Community Development on such form as may be prescribed by the Department of Housing and Community Development:
  - (a) The name, address, and telephone number of the Household member who will serve as the principal contact for the Department of Housing and Community Development;
  - (b) The Household's size and estimated annual income;

- (c) If the Household consists entirely of a person enrolled as a full-time student in a college or university, the annual income of the person's parent or guardian; and
  - (d) For each adult Household member:
    - (1) Verification of current principal residence;
    - (2) If employed, verification of employment and the name and address of the employer;
    - (3) If a college or university student, and the annual income of his or her parent or guardian would qualify under the eligibility standards, verification of matriculation; and
    - (4) Housing counseling certificate of completion.
- 2209.4 Registration shall become effective on the date the application for registration is, after review by the Department of Housing and Community Development, considered complete and shall expire two (2) years thereafter, unless renewed prior to expiration.
- 2209.5 The Department of Housing and Community Development shall notify each registrant of the date upon which their registration became effective and the date upon which the registration will expire.
- 2209.6 An application to renew a registration shall indicate any change in any information that was required to be provided in the initial application.

## **2210 DISTRICT LOTTERY – CONDUCT OF LOTTERIES**

- 2210.1 No later than seventeen (17) days after receiving a Notice of Availability for an Inclusionary Unit to be offered pursuant to a District lottery, the Department of Housing and Community Development shall hold a lottery of those Households on the District List that meet the size and Annual Income requirements for the Inclusionary Unit as described in section § 2211.3.
- 2210.2 Unit size eligibility shall be determined based upon the following standards:

Unit Size (Bedroom)	Minimum Number of Persons in Unit	Maximum Number of Persons in Unit
0	1	1
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10
6	10	12

- 2210.3 For each Inclusionary Unit, the Department of Housing and Community Development shall randomly select at least four (4) Households through a lottery from the District List. If fewer than four (4) Households on the District List meet the Household size and Annual Income standards applicable to the Inclusionary Unit, the Department of Housing and Community Development shall hold a lottery from the Miscellaneous List in order to select at least four (4) Households which meet the Household size and Annual Income standards applicable for the Inclusionary Unit.
- 2210.4 The Households chosen shall then be ranked in the following order:
- Households residing in the District of Columbia, who shall then be ranked by the length of time each has been on the District List;
  - Households with at least one (1) member employed in the District of Columbia, who shall then be ranked by the length of time each has been on the District List; and
  - Households on the Miscellaneous List, who shall then be ranked by the length of time each has been on the Miscellaneous List.
- 2210.5 If more than one (1) Household has been on the registration list for the same period of time, their ranking shall be in the order in which the Households were selected in the lottery.
- 2210.6 If none of the Households selected through a lottery purchase or rent the Inclusionary Unit, the Department of Housing and Community Development shall continue to hold lotteries pursuant to the procedures set forth in this section until a Household purchases or leases the Inclusionary Unit or the Inclusionary Unit is leased or sold; except, the Department of Housing and Community Development may permit the rental or sale of the Inclusionary Unit to a Household that is not registered for the lottery if:
- More than six (6) months has passed since the Notice of Availability was submitted for the Inclusionary Unit and at least 2 lotteries have been conducted;

2210.7 With respect to each Household selected pursuant to a lottery under this section, the Department of Housing and Community Development shall provide a notice under § 2211.

**2211 DISTRICT LOTTERY – NOTIFICATION OF HOUSEHOLDS AND OWNERS**

2211.1 No later than seventeen (17) days after a lottery is held, the Department of Housing and Community Development shall provide to the Owner a written list of the Households selected pursuant to the lottery, along with the lottery rank of each Household.

2211.2 Not later than seventeen (17) days after a lottery is held, the Department of Housing and Community Development shall provide a notice to each of the Households selected in the lottery of their selection and shall provide to each Household their rank, the address, unit type, and maximum rent or purchase price of the Inclusionary Unit for which the lottery was held and the means by which the Household may provide to the Owner the confirmation and information required by § 2211.3.

2211.3 The notice provided pursuant to § 2211.2 shall inform each Household that the Household is required to confirm its interest in the Unit to the Owner within seventeen (17) days after the date of the notice and to provide the following to the Owner within forty-five (45) days after the date of the notice:

- (a) A Declaration of Eligibility, as described in § 2213;
- (b) A Certification of Income, Affordability, and Housing Size, as described in § 2213;
- (c) If purchasing a For Sale Inclusionary Unit, a pre-qualification letter from a lender indicating the Household's credit worthiness and ability to afford the purchase price; and
- (d) Any other documents requested by the Department of Housing and Community Development.

2211.4 The notice shall also state that the Household must execute a pre-sale contract or lease for the Inclusionary Unit no later than sixty (60) days after the date of the notice.

2211.5 A Household that fails to meet a deadline set forth in § 2211.3 or § 2211.4 shall be ineligible to purchase or rent the Inclusionary Unit, unless the Owner extends the deadline.



**2212 DISTRICT LOTTERY — MARKETING OF INCLUSIONARY UNITS TO HOUSEHOLDS SELECTED PURSUANT TO THE LOTTERY**

- 2212.1 The Owner shall market an Inclusionary Unit to each of the Households referred to the Owner under § 2211.1 that has confirmed its interest in the Inclusionary Unit pursuant to § 2211.3.
- 2212.2 The Owner shall not sell or lease the Inclusionary Unit to an Interested Household before forty-five (45) days after the Department of Housing and Community Development provides notice to Households under § 2211.2, unless the Inclusionary Unit is leased or sold to the highest-ranked Interested Household.
- 2212.3 After the forty-five (45) day period designated in § 2212.2, the Owner may lease or sell the Inclusionary Unit to any of the Interested Households referred to the Owner; provided, if there are two (2) or more such Households that are ready and eligible to lease or purchase the Inclusionary Unit, and meet the Owner's non-income based rental or sale criteria, the Owner shall lease or sell the Inclusionary Unit to the highest-ranked such Household.

**2213 VERIFICATION OF HOUSEHOLD ELIGIBILITY; REQUIRED CERTIFICATIONS**

- 2213.1 In order to be eligible to rent or purchase an Inclusionary Unit, a Household shall provide to the Owner of the Inclusionary Unit a Declaration of Eligibility and a Certification of Income, Affordability, and Housing Size.
- 2213.2 Except as set forth in § 2208.1(a), an Owner shall sell or rent an Inclusionary Unit only to a Household which:
- (a) Has provided a Certification of Income, Affordability, and Housing Size, obtained from a Certifying Entity, that complies with the requirements of this section; and
  - (b) Has executed and provided a Declaration of Eligibility that complies with the requirements of this section.
- 2213.3 A Declaration of Eligibility required by this section shall be made on a form promulgated by the Department of Housing and Community Development and shall include a notarized statement of the Household and sworn under penalty of perjury that:
- (a) The Certification of Income, Affordability, and Household Size provided to the Owner was obtained from a Certifying Entity approved by the Department of Housing and Community Development;

- (b) The Household provided accurate and complete information to the Certifying Entity;
  - (c) Each member of the Household will occupy the Inclusionary Unit as its principal residence;
  - (d) The Household does not have an ownership interest in any other housing or will divest such interest before closing on the purchase of, or signing the lease for, the Inclusionary Unit;
  - (e) The Household has satisfactorily completed a housing counseling class for homebuyers or renters approved by the Department of Housing and Community Development and evidence of such satisfactory completion is attached to the Declaration of Eligibility;
  - (f) The Household understands, its rights and obligations under the Inclusionary Covenant or lease riders required pursuant to § 2216.1; and
  - (g) Any other representations required by the Department of Housing and Community Development as part of the form.
- 2213.4 The Inclusionary Unit Owner shall provide the Inclusionary Covenant or lease riders to the Household within ten (10) days after a request from the Household.
- 2213.5 A Certification of Income, Affordability, and Housing Size required by this section means a document signed by an authorized representative of a Certifying Entity approved by the Department of Housing and Community Development, certifying:
- (a) The Household's Annual Income;
  - (b) That the Household's Annual Income qualifies it as being either a Low-Income Household or Moderate-Income Household;
  - (c) That the Household's Annual Income does not exceed the limit imposed by the Inclusionary Development Covenant applicable to the Inclusionary Unit;
  - (d) The Household's size;
  - (e) That the Household's size is within the size range applicable to the Inclusionary Unit under § 2206.3;
  - (f) For a For Sale Inclusionary Unit, that the Household will not expend more than forty-one percent (41%) of the its Annual Income on mortgage payments, insurance, taxes, and condominium and homeowner association fees for the applicable Inclusionary Unit; and

- (g) For a Rental Inclusionary Unit, that the Household will not expend more than thirty-eight percent (38%) of its Annual Income on rent and utilities if not included in the rent for the applicable Inclusionary Unit.

## **2214 CERTIFYING ENTITY**

- 2214.1 A Household shall obtain, and an Owner shall accept, a Certification of Income, Affordability, and Housing Size only from a Certifying Entity approved by the Department of Housing and Community Development.
- 2214.2 The Department of Housing and Community Development may approve a Certifying Entity pursuant to a request for proposals process or through an application process.
- 2214.3 The Department of Housing and Community Development shall approve a Certifying Entity based on the entity's experience in successfully implementing activities similar to those described in § 2214.4, the capacity and experience of the entity's staff and management, the capacity and support of the entity's board of directors, the strength of the entity's financial and management systems, and any other factors the Department of Housing and Community Development deems relevant.
- 2214.4 A Certifying Entity shall be responsible for certification of a Household's Annual Income, certification of a Household's household size, certification that the rent or purchase price of an Inclusionary Unit is affordable to the Household, counseling and training Households for homeownership, reporting data to the Department of Housing and Community Development, compliance with relevant regulations, and any other activities required by the Department of Housing and Community Development.

## **2215 CLOSING PROCEDURES**

- 2215.1 Prior to closing, the Owner shall attach as exhibits to the deed used to convey an Inclusionary Unit both the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size provided to the Owner by Household purchasing the Inclusionary Unit, or such portions of the documents designated by the Department of Housing and Community Development.
- 2215.2 The Owner shall include the following statement in twelve (12) point or larger type, in all capital letters, on the front page of the deed:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN INCLUSIONARY DEVELOPMENT COVENANT, DATED AS OF \_\_\_\_\_, 20\_\_, RECORDED AMONG THE LAND RECORDS OF THE DISTRICT OF COLUMBIA AS INSTRUMENT NUMBER \_\_\_\_\_, ON \_\_\_\_\_ 20\_\_, WHICH AMONG OTHER THINGS IMPOSES RESTRICTIONS ON THE SALE AND CONVEYANCE OF THE SUBJECT PROPERTY.

- 2215.3 Within seventeen (17) days after closing, the new Inclusionary Unit Owner shall provide the Department of Housing and Community Development with a signed copy of the United States Department of Housing and Urban Development Settlement Statement and a copy of the new deed (including the Declaration of Eligibility and the Certification of Income, Affordability, and Housing Size).

**2216 RESPONSIBILITIES OF RENTAL INCLUSIONARY DEVELOPMENT OWNERS AND TENANTS**

- 2216.1 No later than sixty (60) days before each anniversary of the first day of the lease, a Household leasing a Rental Inclusionary Unit shall submit to the Inclusionary Development Owner the following information and documents on or with such form as may be prescribed by the Department of Housing and Community Development:

- (a) A statement as to whether the Tenant intends to renew the lease; and
- (b) If the Tenant states that he or she intends to renew the lease:
  - (1) A certification that the Household continues to occupy the unit as its principal residence;
  - (2) The names of each person residing in the unit;
- (c) A Certification of Income, Affordability, and Household Size that meets the requirements of § 2213; and
- (d) A Declaration of Eligibility that meets the requirements of § 2213.

- 2216.2 A Rental Inclusionary Unit, shall have rider attached to the lease agreement. The rider shall contain, but shall not be limited to the following terms:

- (1) The Tenant shall provide a Certification of Income, Affordability, and Housing Size in accordance with § 2216.1;
- (2) The Tenant shall provide a Declaration of Eligibility in accordance with § 2216.1;
- (3) The Tenant shall maintain its eligibility for the Inclusionary Unit based on the Tenant's Household Size and Annual Income requirements;
- (4) The Tenant shall provide the information and documents required by § 2216.1 within the time period specified by § 2216.1
- (5) The Inclusionary Unit shall be the principal residence of all adult persons who occupy the Inclusionary Unit; and

- (6) The Tenant shall not make intentional misrepresentations to the Department of Housing and Community Development or the Certifying Entity;
- 2216.3 The Owner may, in the Owner's discretion, extend the deadline established by § 2216.1; provided, the deadline shall not be extended beyond the last day of the Tenant's lease.
- 2216.4 If a Tenant is in violation of a lease agreement or rider, the Inclusionary Development Owner shall provide to the Tenant a notice to vacate in accordance with § 42-3505.01 of the D.C. Official Code.
- 2216.5 If a notice to vacate is provided pursuant to § 2216.4, the Inclusionary Development Owner may permit the Household to continue to occupy the unit at the current rent for not less than three (3) and no more than six (6) months after the Inclusionary Unit Owner provides to the Tenant the notice to vacate. Acceptance of rent during this period will not constitute a waiver of the violation of the lease or another obligation of tenancy or void the notice to vacate.
- 2216.6 An Inclusionary Unit Tenant shall not close on the purchase of residential property before the Tenant has provided notice of the intent to terminate its lease of the Inclusionary Unit in accordance with the terms of the lease.
- 2216.7 The Inclusionary Development Owner shall not require payment of rent that is greater than the maximum allowable rent determined in accordance with §§ 2207.2 and 2207.4.
- 2216.8 Annually within fifteen (15) days after the anniversary of the issuance date of the first certificate of occupancy for an Inclusionary Unit in a Rental Inclusionary Development, the Owner shall submit a report to the Department of Housing and Community Development setting forth the following information for the entire Rental Inclusionary Development:
- (a) The number of Rental Inclusionary Units, by bedroom count, that are occupied;
  - (b) The number of Rental Inclusionary Units, by bedroom count, that were vacated during the previous twelve (12) months;
  - (c) For each Rental Inclusionary Unit vacated during the previous twelve (12) months, the unit number of the unit that was vacated, the number of days the unit was vacant (or a statement that the unit is still vacant), and the date on which a Notice of Availability was provided to the Department of Housing and Community Development pursuant to § 2206;

- (d) For each occupied Rental Inclusionary Unit, the names of all occupants, the Household size, and the Household's Annual Income as of the date of the most recent Certification of Income, Affordability, and Housing Size;
- (e) A sworn statement that to the best of the Owner's information and knowledge, the Annual Income and size of each Household occupying each Rental Inclusionary Unit complies with the size and income limits applicable to the Rental Inclusionary Unit; and
- (f) A copy of each new and revised Certification of Income, Affordability, and Housing Size provided in accordance with § 2216.1.

## **2217 RESPONSIBILITIES OF INCLUSIONARY UNIT OWNERS**

- 2217.1 Annually on the anniversary of the closing date for an Inclusionary Unit, the Owner of a For Sale Inclusionary Unit shall submit to the Department of Housing and Community Development certification that it continues to occupy the unit as its principal residence. The certification shall be submitted on or with such form as may be prescribed by the Department of Housing and Community Development.

## **2218 DETERMINATION OF MAXIMUM RESALE PRICE**

- 2218.1 The Maximum Resale Price ("MRP") for a subsequent sale of a For Sale Inclusionary Unit shall be determined through use of the formula  $MRP = (P \times (F) + V$  ("Formula"), where:

- (a)  $P$  = the price the Owner paid for the Inclusionary Unit;
- (b)  $V$  = the sum of the value of the Eligible Capital Improvements and Eligible Replacement and Repair Costs, as determined by the Department of Housing and Community Development pursuant to this section; and
- (c)  $F$  = the sum of the Ten Year Compound Annual Growth Rates of the Area Median Income ("AMI") from the year of the Owner's purchase of the Inclusionary Unit to the year of the sale of the Inclusionary Unit by the Owner. This sum may be expressed:
  - (1) As the result of the formula  $F = (1 + [((AMI \text{ Year } m / AMI \text{ Year } m-10)^{(1/10)} - 1) + \dots ((AMI \text{ Year } k / AMI \text{ year } k-10)^{(1/10)} - 1) / n])^n$ , where  $m$  = the year in which the Inclusionary Unit was purchased by the Owner,  $k$  = the year in which the Inclusionary Unit is sold by the Owner, and  $n$  = the number of years the Inclusionary Unit is owned by the Owner; or
  - (2) As published by the Department of Housing and Community Development.

- 2218.2 For the purposes of determining the value of “V” in the Formula, the following improvements made to an Inclusionary Unit after the date of purchase may be included at the percentage of cost indicated, to the extent they are permanent in nature and add to the market value of the property:
- (a) Eligible Capital Improvements, which will be valued at 100% of reasonable cost, as determined by the Department of Housing and Community Development; and
  - (b) Eligible Replacement and Repair Costs, which shall be valued at 50% of reasonable cost, as determined by the Department of Housing and Community Development.
- 2218.3 Ineligible costs shall not be included in the determining the value of “V” in the Formula.
- 2218.4 The value of improvements may be determined by the Department of Housing and Community Development based upon documentation provided by the Inclusionary Unit Owner or, if not provided, upon a standard value established by the Department of Housing and Community Development.
- 2218.5 The Department of Housing and Community Development may disallow an Eligible Capital Improvement or Eligible Replacement and Repair Cost if the Department of Housing and Community Development finds that the improvement diminished or did not increase the fair market value of the Inclusionary Unit.
- 2218.6 The Department of Housing and Community Development may reduce the value of a capital improvement if there is evidence of abnormal physical deterioration of, or abnormal wear and tear to, the capital improvement.
- 2218.7 The Owner shall permit a representative of the Department of Housing and Community Development to inspect the Inclusionary Unit upon request to verify the existence and value of any capital improvements that are claimed by the Owner.
- 2218.8 No allowance shall be made in the Maximum Resale Price for the payment of real estate brokerage fees associated with the sale of the Inclusionary Unit.
- 2218.9 The value of personal property transferred to a purchaser in connection with the resale of a For Sale Inclusionary Unit shall not be considered part of the sales price of the For Sale Inclusionary Unit for the purposes of determining whether the sales price of the For Sale Inclusionary Unit exceeds the MRP.

**2219 RENTAL OF A FOR SALE INCLUSIONARY UNIT**

- 2219.1 An Inclusionary Unit Owner may temporarily lease a For Sale Inclusionary Unit to a Household referred to it by the Department of Housing and Community Development in accordance with the provisions of this section if such lease is not prohibited by applicable cooperative, condominium, or homeowner association rules.
- 2219.2 Except as set forth in § 2219.6, the lease term may not exceed twelve (12) months and may not be renewed.
- 2219.3 Except as set forth in § 2219.6, no more than one (1) temporary rental may occur with a five (5) year period.
- 2219.4 The Owner and Department of Housing and Community Development shall follow the notice of availability, website registration, and Household selection, notification, referral, and verification processes set forth in § 2206 and §§ 2209 through 2213.
- 2219.5 The maximum rent shall be the rent set forth in the Rent and Price Schedule in place on the date that the Notice of Availability for the Inclusionary Unit is filed.
- 2219.6 Upon written submission of a request substantiating substantial hardship, the Department of Housing and Community Development may grant an extension of the twelve (12)-month period established by § 2219.2 or the one (1)-time limitation established by § 2219.3. The Department of Housing and Community Development shall approve or disapprove the request, in its sole discretion based on the evidence before it, within a reasonable time period. Substantial hardship may include military service, Peace Corps service, or another reason causing the Owner to be required to leave the District metropolitan area temporarily.
- 2219.7 A condominium fee or assessment that a lessee of an Inclusionary Unit Owner leased under this section is required to pay shall be considered part of the rent of the lessee when determining whether the rent charged is consistent with the Maximum Rent and Purchase Price Schedule.

**2220 CONVERSION OF A RENTAL INCLUSIONARY DEVELOPMENT TO A FOR SALE INCLUSIONARY DEVELOPMENT**

- 2220.1 No condominium or cooperative documents may be filed to convert a Rental Inclusionary Development to a condominium or cooperative until a new application for a Certificate of Inclusionary Zoning Compliance is filed by the Inclusionary Development Owner and approved by the Department of Consumer and Regulatory Affairs and a Certificate of Inclusionary Zoning Compliance is issued by the Department of Consumer and Regulatory Affairs pursuant to the provisions set forth in § 2203.



- 2220.2 Prior to the issuance of a Certificate of Inclusionary Zoning Compliance under this section, the Inclusionary Development Owner shall record a new or amendatory Inclusionary Development Covenant, applicable to a For Sale Inclusionary Development, that complies with § 2204.
- 2220.3 The application for a Certificate of Inclusionary Zoning Compliance filed under this section shall demonstrate that the location and size of the Inclusionary Units will not change from those approved under the Certificate of Inclusionary Zoning Compliance issued for the Rental Inclusionary Development.
- 2220.4 Tenants occupying Rental Inclusionary Units shall have the same rights as are provided in the Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*) (“Conversion Act”).
- 2220.5 The offered sales price for a Rental Inclusionary Unit converted to a For Sale Inclusionary Unit shall not exceed the applicable maximum purchase price stated on the Price and Rent Schedule that is in effect on the date that the Tenant receives the first notice of conversion pursuant to the Conversion Act.
- 2220.6 If the tenant does not purchase the Inclusionary Unit within the time provided in the Conversion Act, and the tenant is not entitled to remain in the unit pursuant to section 208 of the Conversion Act (D.C. Official Code § 42-3402.08), the Inclusionary Development Owner shall furnish the Department of Housing and Community Development with a Notice of Availability pursuant to § 2206 and register the Unit with the website established by the District pursuant to the Affordable Housing Clearinghouse Directory Act of 2008, effective August 15, 2008 (D.C. Law 17-215; 55 DCR 5313).

## **2221 SALE BY HEIRS AND LENDERS**

- 2221.1 If an Inclusionary Unit Owner dies, at least one (1) heir, legatee, or other person taking title to the Inclusionary Unit by will or by operation of law shall occupy the Inclusionary Unit or shall provide the Department of Housing and Community Development with a Notice of Availability in accordance with § 2206.
- 2221.2 In the event of foreclosure, the Inclusionary Development Covenant and Inclusionary Unit Covenant shall not be released and the mortgage holder shall provide the Department of Housing and Community Development with a Notice of Availability in accordance with § 2206.

## **2222 VIOLATIONS AND OPPORTUNITY TO CURE**

- 2222.1.1 Prior to exercising the authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act, the Department of Housing and Community Development shall provide to the person who is alleged to have violated

the Inclusionary Zoning Act or this Chapter a written notice setting forth with particularity the alleged violation and shall provide to that person at least thirty (30) days to cure the alleged violation. If the person cures the violation within the designated cure period, the Department of Housing and Community Development shall not exercise its authority to revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act. The Department of Housing and Community Development may extend the designated cure period for good cause shown.

- 2222.2 The Department of Housing and Community Development shall not revoke a building permit or certificate of occupancy pursuant to § 104 of the Inclusionary Zoning Act except for a willful, substantial violation of the Inclusionary Zoning Act or this Chapter.

## **2223 WAIVER**

- 2223.1 The Department of Housing and Community Development may, upon the request of an agency of the District or the written request of an Inclusionary Development Owner, waive the application of any of the provisions of this Chapter if:
- (a) The Inclusionary Development is participating in a District or federal program to provide affordable housing to low or moderate-income households, including the New Communities Program, Community Development Block Grant Program, Low-Income Housing Tax Credit Program, and Housing Production Trust Fund Program;
  - (b) The waived provision is not required by the Zoning Commission's Inclusionary Zoning Regulations or the Inclusionary Zoning Act; and
  - (c) Application of the provision is burdensome when combined with other District or federal regulations or standards, the goal of the provision is adequately addressed by other District or federal regulations or standards, or waiver of the provision is in the best interests of the District.

## **2224 APPLICABILITY**

- 2224.1 These rules shall become applicable immediately.
- 2224.2 In accordance with the Zoning Commission's Inclusionary Zoning Regulations (Title 11 DCMR, Chapter 26), these rules and the provisions of the Inclusionary Zoning Act shall not apply to:
- (a) Hotels, motels, inns, or dormitories;
  - (b) Housing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff;

- (c) Housing that is owned or leased by foreign missions exclusively for diplomatic staff;
- (d) Rooming houses, boarding houses, community-based residential facilities, or single room occupancy developments;
- (e) Properties located in any of the following areas:
  - (i) The Downtown Development or Southeast Federal Center Overlay Districts;
  - (ii) The Downtown East, New Downtown, North Capitol, Southwest, or Capitol South Receiving Zones, as such areas were defined on February 12, 2007;
  - (iii) The W-2 zoned portions of the Georgetown Historic District;
  - (iv) The R-3 zoned portions of the Anacostia Historic District;
  - (v) The C-2-A zoned portion of the Naval Observatory Precinct District; and
  - (vi) The Eighth Street Overlay;
- (f) A building for which the application for a building permit was authorized by an order of the Board of Zoning Adjustment promulgated prior to the date that the first Maximum Rent and Price Schedule is published in the *D.C. Register*, subject to the requirements of 11 DCMR § 3202.6.
- (g) A building approved by the Zoning Commission pursuant to Chapter 24 of Title 24 DCMR, if the approved application was set down for hearing by the Zoning Commission for the District of Columbia prior to March 14, 2008.
- (h) Any other building for which a building permit was filed prior to the date that the first Maximum Rent and Price Schedule is published in the *D.C. Register* subject to the further requirements of 11 DCMR § 3202.4.

## 2299 DEFINITIONS

2299.1 When used in this Chapter, the following words and phrases shall have the meanings ascribed below:

**Annual Income** – annual income as defined in 24 C.F.R. § 5.609 as of [the date of publication of this Chapter in the *D.C. Register*].

**Area Median Income** – the area median income for a household in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development, adjusted for household size without regard to any adjustments made by the United States Department of Housing and Urban Development for the purposes of the programs it administers. Adjustments of Area Median Income for household size shall be made in the same manner as is prescribed in section 2(1) of the Housing Production Trust Fund Act, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code §§ 42-2801(1)).

**Bedroom** – a room with immediate access to an exterior window and a closet that is designated as a “bedroom” or “sleeping room” on construction plans submitted in an application for a building permit for an Inclusionary Development.

**Certifying Entity** – means an entity certified by the Department of Housing and Community Development pursuant to § 2214.

**Eligible Capital Improvement** – major structural system upgrades, special assessments, new additions, and improvements related to increasing the health, safety, or energy efficiency of an Inclusionary Unit. Such improvements generally include: (i) major electrical wiring system upgrades; (ii) major plumbing system upgrades; (iii) room additions; (iv) installation of additional closets and walls; (v) alarm systems; (vi) smoke detectors; (vii) removal of toxic substances, such as asbestos, lead, mold, or mildew; (viii) insulation or upgrades to double-paned windows or glass fireplace screens; and (ix) upgrade to Energy Star built-in appliances, such as furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods.

**Eligible Replacement and Repair Cost** – in-kind replacement of existing amenities and repairs and general maintenance that keep an Inclusionary Unit in good working condition. Such improvements generally include: (i) electrical maintenance and repair, such as switches and outlets; (ii) plumbing maintenance and repair, such as faucets, supply lines, and sinks; (iii) replacement or repair of flooring, countertops, cabinets, bathroom tile, or bathroom vanities; (viii) non-Energy Star replacement of built-in appliances, including furnaces, water heaters, stoves, ranges, dishwashers, and microwave hoods; (ix) replacement of window sashes; (x) fireplace maintenance or in-kind replacement; (xi) heating system maintenance and repairs; and (xii) lighting system.

**For Sale Inclusionary Development** – the portion of an Inclusionary Development that includes or will include Inclusionary Units that will be sold to Households.

**For Sale Inclusionary Unit** – an Inclusionary Unit that will be or has been sold to a Household.

**Household** – all persons who will occupy the Inclusionary Unit. A Household may be a single family, one (1) person living alone, two (2) or more families living together, or any other group of related or unrelated persons who share living arrangements.

**Inclusionary Development** – a development subject to the provisions of the Inclusionary Zoning Program.

**Inclusionary Development Covenant** – the Inclusionary Development Covenant described in § 2204.

**Inclusionary Development Owner** – a person, firm, partnership, association, joint venture, or corporation, or government with a property interest in land or improvements that is or will be occupied by an Inclusionary Development, but excluding Inclusionary Unit Owners.

**Inclusionary Unit** – a dwelling unit set aside for sale or rental to Low-Income or Moderate-Income Households as required by the Inclusionary Zoning Program.

**Inclusionary Unit Owner** – a Household member or members that owns an Inclusionary Unit.

**Inclusionary Zoning Act** – the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*).

**Inclusionary Zoning Program** – all of the provisions of the Zoning Commission’s Inclusionary Zoning Regulations, the Inclusionary Zoning Act, and this Chapter.

**Ineligible Costs** – means normal maintenance, general repair work, personal or decorative items or work, cosmetic enhancements, installations with limited useful life spans, and non-permanent fixtures not eligible for capital improvement credit as determined by the Department of Housing and Community Development. Such costs generally include: (i) cosmetic enhancements such as fireplace tiles and mantels, decorative wall coverings or hangings, window treatments (for example, blinds, shutters, and curtains), installed mirrors, shelving, and refinishing of existing surfaces; (ii) non-permanent fixtures, such as track lighting, door knobs, handles and locks, and portable appliances; and (iii) installations with limited useful life spans, such as carpet, painting of existing surfaces, and light bulbs.

**Low-Income Household** – a Household with a total Annual Income equal to or less than fifty percent (50%) of the Area Median Income, adjusted for household size.

**Market Rate Unit** – a unit in an Inclusionary Development that is not an Inclusionary Unit.

**Moderate-Income Household** – a Household with a total Annual Income greater than fifty percent (50%) and less than or equal to eighty percent (80%) of the Area Median Income adjusted for household size.

**Notice of Availability** – the notice required to be provided to the Department of Housing and Community Development by an Owner in accordance with § 2206.

**Owner** – both an Inclusionary Development Owner and an Inclusionary Unit Owner.

**Rent and Price Schedule** – the rent and price schedule published in the *D.C. Register* pursuant to § 103(b) of the Inclusionary Zoning Act (D.C. Official Code § 6-1041.03(b)).

**Rental Inclusionary Development** – the portion of an Inclusionary Development that includes, or will include, Inclusionary Units that will be leased to Households.

**Rental Inclusionary Unit** – an Inclusionary Unit that will be or has been leased to a Household.

**Tenant** – a Household member or members that occupy a Rental Inclusionary Unit.

## DEPARTMENT OF HEALTH

**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)) ("Act"), Mayor's Order 98-140, dated August 20, 1998, gives notice of the adoption of an amendment to chapter 65 of Title 17 of the District of Columbia Municipal Regulations (DCMR) (Pharmacists) by adding a new § 6512.7(c)(6).

The purpose of this amendment is to permit pharmacists, who have been certified by the Board of Pharmacy to administer immunizations and vaccinations, to administer pneumococcal and influenza vaccinations, including H1N1, to any person age eighteen (18) and older pursuant to one written protocol and standing order with one District of Columbia licensed physician. This will eliminate the need for multiple protocols and standing orders when the delegation is expressly limited to pneumococcal and influenza vaccinations.

These rules were previously published as emergency and proposed rulemaking on October 16, 2009 at 56 DCR 8204. No written public comments were received in connection with this notice. No changes have been made to the regulations from the previous publication. These regulations will become effective upon publication of this notice in the D.C. Register.

**Section 6512.7 is amended to read as follows:**

6512.7 The written protocol shall contain, at a minimum, the following:

- (a) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of immunizations or vaccinations;
- (b) A statement identifying the individual pharmacist(s) authorized to administer immunizations or vaccinations as delegated by the physician;
- (c) A statement identifying the patient or groups of patients to receive the authorized immunization or vaccination; which shall be limited to:
  - (1) Patients who are currently under the individual physician's care or with whom the physician has provided medical treatment or care within the twelve months prior to the date of the written protocol;
  - (2) Patients who are currently under the practice's care or with whom a physician within the practice has provided medical treatment or care within the twelve months prior to the date of the written protocol;
  - (3) Residents of a health care, residential services, or assisted living facility, when the medical director of such facility is the physician making the delegation;

- (4) District resident populations identified by the Director of the Department of Health as part of a public health services program, when the Director, or his or her designee, is the physician making the delegation;
  - (5) Inmates of the District of Columbia jail, when the medical director for the facility is the physician making the delegation; and
  - (6) The patient group covered by the protocol may cover any person age eighteen (18) and older with valid identification, if the protocol is expressly limited to only pneumococcal vaccinations and influenza vaccinations, including but not limited to H1N1 and other epidemic vaccinations which are then currently called for by the World Health Organization or the Center for Disease Control at the time of the vaccination; and
- (d) A statement identifying the location(s) at which the pharmacist may administer immunizations or vaccinations which shall not include where a patient resides, except for a licensed nursing home, residential care facility, assisted living center, the District of Columbia jail, or a hospital;
  - (e) A statement identifying the immunizations and vaccinations and emergency anaphylactic reaction treatment that may be administered by the pharmacist;
  - (f) A statement identifying the activities the pharmacist shall follow in the course of administering immunizations and vaccinations, including procedures to follow in the case of reactions following administration; and
  - (g) A statement that describes the content of, and the appropriate mechanisms for the pharmacist to report the administration of immunizations and vaccinations to the physician issuing the written protocol within the time frames specified in the protocol; which shall include providing the physician with a copy of the following records:
    - (i) The name, address, gender, allergies and date of birth of the individual receiving the immunization or vaccination;
    - (ii) The date of administration
    - (iii) The route and site of the immunization or vaccination;
    - (iv) The name, dose, manufacturer's lot number, and expiration date of the vaccine;
    - (v) The name of the pharmacist administering the immunization or vaccination;
    - (vi) Any adverse events encountered.